

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NO. 23-CR-20121

ASHLEY GRAYSON AND
JOSHUA GRAYSON,

Defendants.

TRANSCRIPT OF THE TRIAL

BEFORE THE

HONORABLE JON P. MCCALLA

PRELIMINARY INSTRUCTIONS

TUESDAY

MARCH 26, 2024

TINA DuBOSE GIBSON, RPR, RCR
OFFICIAL REPORTER
FOURTH FLOOR FEDERAL BUILDING
MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

A P P E A R A N C E S

Appearing on behalf of the Government:

PATRICK NEAL OLDHAM
BRYCE PHILLIPS
United States Attorney's Office
167 N. Main Street, Suite 800
Memphis, Tennessee 38103
(901) 544-4231
neal.oldham@usdoj.gov
bryce.phillips@usdoj.gov

Appearing on behalf of the Defendant Ashley Grayson:

SCOTT H. PALMER
MICHAEL LEVINE
Scott H. Palmer, PC
15455 Dallas Parkway
Suite 540
Dallas, Texas 75001
(214) 987-4100
scott.palmer@palmerperlstein.com
michael.levine@palmerperlstein.com

LESLIE I. BALLIN
Ballin, Ballin & Fishman, PC
200 Jefferson Avenue
Suite 1250
Memphis, Tennessee 38103-2007
(901) 525-6278
lballin@bbfpc.com

Appearing on behalf of the Defendant Joshua Grayson:

MICHAEL E. SCHOLL
The Scholl Law Firm
200 Jefferson Avenue
Suite 1500
Memphis, Tennessee 38103
(901) 529-8500
mike@scholl-law-firm.com

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THE COURT: Everyone can be seated. Ladies and gentlemen, you're now the jury in this case. I'm going to take a few minutes -- it's actually a little longer -- to tell you something about your duties as jurors and to give you some preliminary instructions.

At the end of the trial, I will give you detailed instructions on the law, and those instructions will control your deliberations. These are merely for your guidance. They're important, but they are for your guidance so that you can make sense of materials as they're submitted. At the end of the case, again, I will give you detailed instructions on the law, and those instructions are the instructions you must follow in making your decision in this case.

This is a criminal case brought by the United States Government, and the charges contained against the defendants are contained in the indictment. And while I've read it to you a long time ago, I'll read it to you again. Again, it's short, the length doesn't make any difference, and it's not binding on you in any way. It's not evidence. As we talked about, it's just a way to give notice as to what the charges are.

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1 The indictment in this case reads as follows:

2 On or about August 26 of 2022, and continuing
3 until on or about September 11, 2022, in the Western District
4 of Tennessee and elsewhere, the defendants, Ashley Grayson
5 and Joshua Grayson, together with others known and unknown to
6 the grand jury, did knowingly and intentionally conspire to
7 use and cause another to use a facility of interstate
8 commerce, to wit, a cell phone with the intent that the
9 murder of DH, a real person known to the grand jury, be
10 committed in violation of the law of the State of
11 Mississippi. And as consideration for the receipt of and
12 promise and agreement to pay money, and other items of
13 pecuniary value, all in violation of Title 18 United States
14 Code Section 1958.

15 Now, those are the charges in this case, and each
16 defendant has pled not guilty to the charge contained in the
17 indictment. And each defendant is presumed by the law to be
18 innocent unless and until proved guilty beyond a reasonable
19 doubt. It will be your duty to decide from the evidence to
20 be presented whether the defendant that you're considering --
21 remember, we consider each defendant separately -- whether
22 the defendant that you are considering is guilty or not
23 guilty of the crime charged.

24 You will decide from the evidence what the facts
25 are, and your verdict will be based on those facts. You are

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1 the sole judges of the facts. You must then apply those
2 facts to the law as I give it to you, and in that way reach
3 your verdict. You must follow the law whether you agree with
4 it or not.

5 You should not take anything that I may say or do
6 during the trial as indicating what I think of the evidence
7 for what your verdict should be. In fact, I will endeavor
8 not to say anything to suggest that because that is your
9 decision and your decision alone.

10 The defendants have been charged with a single
11 crime in this case, and there are two defendants in this
12 case, but as we've already said, they are to be tried
13 separately. That is, the Government has a burden of proving
14 as to each defendant the facts necessary to establish beyond
15 a reasonable doubt the Government's asserted claim, that is,
16 the indicted charge against that defendant.

17 It is correct that your decision on one
18 defendant, whatever it is, guilty or not guilty, should not
19 influence your decision on the other defendant. In other
20 words, you really do keep them separate, and you have to
21 decide them individually.

22 Now, some of the people who might have been
23 charged in this case will not be going on trial. I don't
24 know if we'll hear from anybody in that category, but I'm
25 looking to everybody to make sure I understand that. You may

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1 hear some other names. That doesn't matter. There's no
2 requirement that all members or all participants in a crime
3 or a conspiracy be charged and prosecuted or tried together.
4 So do not be concerned about that.

5 I'm going to go over in a moment the elements of
6 the offense, and I'll tell you about them. But, again, at
7 the end of the case, you'll get a detailed set of
8 instructions, and you get a written set of instructions for
9 all of you to refer to. So those are the instructions you'll
10 rely on. These are simply to help you as you go through the
11 process of listening to the case. As you know, of course,
12 the indictment is no evidence of guilt at all.

13 Now, the Government has a strict or heavy burden
14 in this case, but I'm going to tell you at the outset the
15 general instruction on burden of proof. The Government does
16 have a strict or heavy burden, and that's proper for anyone
17 to point that out, and the Government has to accept that and
18 acknowledge that. But it's not necessary that a defendant --
19 an individual defendant's guilt be proved beyond all possible
20 doubt. It's only required that the Government's proof
21 exclude any reasonable doubt concerning a defendant's guilt.

22 A reasonable doubt is a real doubt based upon
23 reason and common sense after careful and impartial
24 consideration of all of the evidence in the case. Proof
25 beyond a reasonable doubt, therefore, is proof of such a

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1 convincing character that you would be willing to rely and
2 act upon it without hesitation in the most important of your
3 own affairs.

4 At the end of the case, after you've considered
5 all the evidence and deliberated among yourselves, if you are
6 convinced that the defendant has been proven guilty beyond a
7 reasonable doubt, then you should say so. And if you're not
8 convinced, you should say so also.

9 During the case, you've already heard references
10 to evidence. Now, evidence is defined so that we have
11 reliable information to submit to the jury. The term
12 "evidence" includes the testimony of the witnesses, the
13 exhibits admitted in the record, any facts as to which the
14 parties stipulate. I'm not sure there will be any
15 stipulations. They aren't required to. But sometimes
16 there's stipulations. That is, we agree that such and such
17 is a fact. It's not necessary to put any proof on about that
18 and any facts as to which the Court takes judicial notice.

19 Of course, remember that anything the lawyers
20 say, with all due respect to the lawyers, is not evidence in
21 the case. And that's already -- the point has been made in
22 the voir dire process.

23 It is your own recollection and interpretation of
24 the evidence that controls the case. And, of course, what
25 the lawyers say, it's not going to be binding on you. In

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1 considering the evidence -- by the way, about judicial
2 notice, so it doesn't sound like I really can do very much.
3 I can only take judicial notice of the fact that it's so
4 obvious that, frankly, all of you would know. So I can take
5 judicial notice that Memphis, Tennessee, is in the Western
6 District of Tennessee. You don't really need any help on
7 that one.

8 I can actually take judicial notice of days on a
9 calendar. Now, I have to check and make sure that all of it
10 is right, but if I'm asked to take judicial notice that a
11 certain day was a Thursday or Friday or Sunday, I can take
12 judicial notice of that. It's another very ascertainable
13 fact, but I cannot take judicial notice of anything that
14 really is capable of being disputed. I cannot do that.

15 Now, in considering the evidence in the case, you
16 will have to make deductions and reach conclusions which
17 reason and common sense lead you to make. And you should not
18 be concerned about whether the evidence is direct evidence or
19 circumstantial evidence. And this is an important concept,
20 so you need to know it at the outset.

21 Of course, direct evidence is the testimony by
22 one who asserts actual knowledge of a fact such as an
23 eyewitness. Circumstantial evidence is proof of a chain of
24 facts and circumstances, indicating that a defendant is
25 either guilty or not guilty. The law makes no distinction

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1 between direct evidence and circumstantial evidence. Of
2 course, it is up to you, the jury, to decide how much weight
3 to give to any evidence.

4 You should also, as I've indicated, you should
5 also not assume from anything that I may say or do, that I
6 have any position or wish to convey any position concerning
7 any evidence in the case. I will, however, give you
8 instructions sometimes if evidence cannot be received for a
9 particular reason. And we'll talk about that in a moment.

10 In saying that you must consider all of the
11 evidence, I do not mean that you must accept all of the
12 evidence as true and accurate. You should decide in this
13 case -- and you will need to decide in this case -- whether
14 you believe each witness, whether you believe what each
15 witness has to say, and how important that witness's
16 testimony was. In making that decision, you may believe or
17 disbelieve any witness in whole or in part.

18 Also, the number of witnesses testifying
19 concerning any particular dispute is not controlling. You
20 may decide that the testimony of a smaller number of
21 witnesses concerning any fact in dispute is more believable
22 than the testimony of a larger number of witnesses to the
23 contrary.

24 In deciding whether you believe or disbelieve any
25 witness, I suggest that you ask yourself a few questions:

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1 Did the witness impress you as one who was
2 telling the truth? Did the witness have any particular
3 reason not to tell the truth? Did the witness have a
4 personal interest in the outcome of the case? Did the
5 witness seem to have a good memory? Did the witness have the
6 opportunity and ability to observe accurately the things the
7 witness testified about? Did the witness appear to
8 understand the questions clearly and answer them directly?

9 Would you like some water? Are you okay?

10 THE JUROR: I'm just getting a little warm, and
11 it makes me cough.

12 THE COURT: Okay. No, I will tell you we're not
13 here to make your lives miserable, and so we do let you bring
14 a bottle of water in here. We don't let you bring coffee,
15 tea, or things that have color in it because they replace
16 this carpet about once every 35 years. And so we can't do
17 that. But tell us, if you need something, and we will try to
18 take care of it.

19 We're talking about evaluating a witness's
20 testimony and credibility. You will want to also ask: Did
21 the witness's testimony differ from the testimony of other
22 witnesses or from the evidence and testimony that you do
23 believe? You should ask yourself whether the evidence tends
24 to prove that a witness has intentionally testified falsely
25 or whether the evidence simply shows that the witness said

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1 something or failed to say something or do something which is
2 simply a mistake or error. So you have to use common sense
3 in evaluating testimony.

4 To put it more directly, you should keep in mind
5 that a simple mistake by a witness does not necessarily mean
6 that the witness was not telling the truth as that witness
7 remembers it because people naturally tend to forget some
8 things or remember other things inaccurately.

9 So if a witness has made a misstatement, you need
10 to consider whether the misstatement was simply an innocent
11 lapse of memory or an intentional falsehood, and that may
12 depend on whether the testimony was as to an important fact
13 or only an unimportant detail.

14 I will remind you at this time -- and I do not
15 know what the final instruction will be on this, but I want
16 you to remember at all times, that each defendant is here
17 individually. Each defendant has an absolute right not to
18 testify guaranteed by our Constitution and Bill of Rights.

19 The fact that a witness may not testify cannot be
20 considered by you in any way. Do not even discuss it in your
21 deliberations. Remember at all times that it is up to the
22 Government to prove each defendant individually guilty beyond
23 a reasonable doubt. It is not up to an individual defendant
24 to prove that he or she is innocent.

25 At the end of the case, I'm going to give you

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1 some additional instructions along this line, but I think
2 we'll wait because this gives you the idea of what we're
3 doing.

4 Now, there will be witnesses other than,
5 obviously, the -- well, we don't know who will testify, but
6 there will be witnesses who may be subject to the analysis in
7 terms of whether to believe them or not. That's what we're
8 talking about really earlier. So just keep that in mind.

9 There will be some law enforcement witnesses that
10 will testify. Now, we all know that we shouldn't treat them
11 differently from other witnesses. They don't get special
12 extra treatment or negative treatment. Law enforcement
13 witnesses are someone who is employed by the city, the
14 county, the state, or federal government in the operation of
15 enforcement of the laws of the United States.

16 That doesn't mean that his or her testimony is
17 deserving of more or less consideration or greater or lesser
18 weight than that of an ordinary witness. So in reviewing the
19 testimony of the law enforcement witnesses, you would give to
20 that testimony the same type of consideration that we talked
21 about earlier.

22 There may be some testimony from someone who may
23 testify -- I'm not sure about this -- as an opinion witness,
24 a person who by education or qualification is able to give an
25 opinion on a particular fact in the case.

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1 Now, if that happens, you just have to remember a
2 couple of things. You cannot let that person substitute
3 their opinion for your judgment because you make a decision
4 as to all the facts. You do not have to accept the testimony
5 of an opinion witness. It will be up to you to decide how
6 much weight to give such testimony, if any. And, of course,
7 you will want to consider, if you reach those questions, the
8 witness's qualifications and how that particular witness
9 reached that witness's conclusions.

10 Also consider the other factors that we talked
11 about in weighing the credibility of witnesses if someone is
12 allowed to express an opinion on an issue before you.

13 There may be some testimony about other acts that
14 may have been committed by someone in the case. If that
15 occurs, I will give you some special instructions about how
16 you should deal with that at the time. We all understand
17 that this is about the charge contained in the indictment,
18 and it is not about whether somebody did something five years
19 ago or ten years ago in this case. It's simply not going to
20 have application generally.

21 So if it does occur, and that's allowed, I will
22 give you some specific instructions after counsel have made a
23 certain showing as to how you might consider that additional
24 testimony about what we sometimes refer to as other acts by
25 either a witness or someone else.

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1 At the end of the case, you're going to have to
2 decide this case based on what you hear and see here in the
3 courtroom and based on the exhibits that are received. That
4 is based on the evidence in the case. You may hear some
5 recorded testimony, but always remember that if you do hear
6 that, it is not what somebody says the recording says, it is
7 what you can ascertain it says. I hope that makes sense. In
8 other words, you have to listen to it and make sure that you
9 understand what that was.

10 Also at the end of the case, you're not going to
11 have a transcript even though I can read almost everything
12 that's said in the courtroom up here. That technology is not
13 something that we make available to you -- and we can make it
14 available to counsel, but they have to make arrangements for
15 it -- yet, and that's because it's just an initial draft
16 transcript. So we don't have a chance to give you a full
17 transcript, so you're not going to get a transcript.

18 There's another reason. It takes about two hours
19 of work to prepare a single hour of testimony from the Court,
20 so it would be a long time waiting on the transcript. And
21 the next thing is that a transcript doesn't show the way the
22 person said it. It only shows the words on the page. And
23 every last one of you has been in a conversation with someone
24 in which they ended up saying yes or no to part of the
25 conversation, but you actually understood that it meant the

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1 opposite. It didn't really mean yes or no. It actually
2 meant an affirmative or negative because of the way that
3 conversation evolved, and you could see them and you could
4 understand them. So sometimes even words as simple as yes or
5 no can be misconstrued if you're just looking at a
6 transcript. And can you imagine what it's like when you have
7 longer answers with more complicated inflexion, pauses, and
8 so forth.

9 So you don't get a transcript because that would
10 take away a fundamental function of the jury, which is to
11 listen to the testimony and to make your own determination
12 about what you believe and do not believe and also to use
13 your common sense as you listen to it so you can understand
14 what the actual meaning is. That's very important. So we
15 don't make a transcript available.

16 There will be a day sometime in the next, you
17 know, years where we may be able to do something differently,
18 but we cannot really do that now. So you're not going to get
19 a transcript. So what are you going to do?

20 First of all, you're going to listen really
21 carefully and make your decision based on what is said and
22 observed here in the courtroom, but we do allow you to take
23 notes. Somebody brought a notepad out with them. That's
24 fine. You don't need to take notes during my part because I
25 give you written instructions later on. You are allowed to

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1 take notes. Sometimes that's helpful, but I'm going to tell
2 you a couple things about that.

3 The first thing is that at the end of the trial,
4 you're going to get a document, a list. It's called a
5 witness list and exhibit list. It's going to list each of
6 the witnesses who testified. So you don't really -- I mean,
7 you can write it down if you want to. That's perfectly fine,
8 but you're going to get an official list.

9 The second thing is that that list will also
10 include a list of the exhibits. So you don't have to write
11 that down. You're going to know what the exhibits are.

12 You're also going to get the exhibits themselves.
13 And if the exhibits include something that's recorded, you'll
14 get the ability to play it back. So you're going to get all
15 of those things. So you need to be mindful that those are
16 things that you're going to have to let you refresh your
17 memory as you go back through and make your decisions.

18 But do remember that you need to pay close
19 attention to testimony that's given because that is what
20 you're going to have to rely on in making your ultimate
21 decisions in this case.

22 All of you know that you should not take as
23 evidence any statements of counsel made during the trial. If
24 counsel stipulates to a fact -- and I'm not aware that they
25 will be, but I'll look out there one more time, and they

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1 might later on. If they stipulate to a fact, then that fact
2 will be stated to have been stipulated to or admitted by
3 counsel, and you may regard that fact as conclusively
4 established with no further proof required in the case.

5 As to questions that are asked, listen carefully.
6 As to any question that is asked as to which an objection is
7 sustained, you must not speculate as to what the answer would
8 have been. And you must assume that the answer would be of
9 no value to you.

10 You may not consider for any purpose any
11 insinuation of a question. The fact is questions are not
12 evidence. The answer is the evidence. And if there's a
13 misconnect between the question and the answer, you can only
14 consider the answer. You can consider the answer when they
15 connect to each other for the purpose of helping to
16 understand, that is, understanding what the answer was.

17 But if somebody asks a question and the witness
18 goes off on some nonrelated subject, then we don't consider
19 the question. We can consider the response, but, of course,
20 it's problematic if the witness is doing that. And we'll try
21 to deal with that if necessary. So you must never speculate
22 to be true any suggestion by a question asked a witness. The
23 question is not evidence and is only to be considered as it
24 gives meaning to the answer.

25 Now, I read the indictment to you earlier. And

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1 I'm going to tell you about the law that generally applies in
2 this area. By the way, at the end of the case, you'll
3 consider all the evidence that you have in the case. You
4 will want to do that. And the indictment in this case is
5 we've referred to it as a murder for hire case.

6 Now, it's got kind of an inflammatory sound, so
7 don't let that affect you. The questions is: Are the
8 elements that are required to be proven, proven by the
9 Government with proof beyond a reasonable doubt.

10 Count 1, the only count in this case, accuses the
11 defendants of conspiring with each other and with others
12 known and unknown to use and cause use of a facility of
13 interstate commerce, a cell phone, with the intent that the
14 murder of DH be committed in violation of the law of the
15 State of Mississippi. And as consideration for the receipt
16 of and promise and agreement to pay money and other items of
17 pecuniary value in violation of Title 18 United States Code
18 Section 1958, in order to be found guilty of that offense,
19 the Government has to prove certain elements or components
20 beyond a reasonable doubt. Each one has to be proven beyond
21 a reasonable doubt.

22 First, that the defendant that you're
23 considering -- I'm going to say it that way a lot of times
24 because it has to be specific as to each defendant -- as to
25 the defendant that you're considering, conspired to cause

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1 another person to use a facility of interstate commerce,
2 essentially a cell phone.

3 Second, that the defendant did so -- the
4 defendant you're considering did so with the intent that a
5 murder be committed in violation of the laws of the State of
6 Mississippi. And that's got the intent component. That was
7 not by accident or mistake. It was with the intent that a
8 murder be committed in violation of the laws of the State of
9 Mississippi.

10 And, third, that the murder was to be committed
11 as consideration for the promise or agreement to pay
12 something of pecuniary value. You were going to pay
13 something for it or transfer something for it or give some
14 type of consideration for it, but that the murder was to be
15 committed as consideration for the promise or agreement to
16 pay anything of pecuniary value. It could be money. It
17 could be other things that you were going to get in
18 connection with an agreement to commit that crime.

19 Now, a conspiracy is a kind of criminal
20 partnership, and I'm going to say this to be really clear. A
21 marriage is a kind of partnership, but that's not what we're
22 talking about. That's not the same thing. The fact that
23 you're married to somebody does not meet this definition.

24 And, Mr. Scholl, did I get that right?

25 MR. SCHOLL: Absolutely, Your Honor.

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1 THE COURT: Well, and the thing is we try to be
2 very clear about that throughout.

3 A conspiracy is a kind of criminal partnership.
4 For you to find a defendant guilty of this crime, the
5 Government must prove each and every one of the following
6 elements beyond a reasonable doubt, and this relates to
7 conspiracy. That's a component of what we're taking about.
8 So what you've got is components, three of them, and then you
9 can have components within that. It's kind of like, if you
10 did a diagram in high school or earlier of a sentence, so
11 we're going to break that down.

12 First, that two or more people conspired or
13 agreed to commit the crime of murder for hire. So you have
14 to have an agreement. It's not formal. You don't have to
15 have a document. In fact, almost no conspiracies have
16 something like -- some might, but almost none have something
17 like that. But two or more people agreed to commit the crime
18 of murder for hire. They conspired to do so.

19 Well, the second thing is that the defendant that
20 you're considering knowingly and voluntarily joined the
21 conspiracy. Now, they can be part of the conspiracy from the
22 very beginning. In fact, they could be the first two people.
23 But the person you're considering has to have become part of
24 that, whether they are from the very beginning or whether
25 they're a little later on.

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1 Third, that a member of the conspiracy did
2 something, some act described for the purpose of advancing or
3 helping the conspiracy.

4 Now, I'm going to talk about counsel about some
5 of these instructions because they've submitted them to me,
6 and I may refine them a little later on because there may be
7 a little nuance that we have to correct here.

8 But the idea is we've got -- like a recipe, we
9 have pieces that have to all be present and within that one
10 component, that one part of the recipe, there are a couple of
11 more components. And so it's like a checklist. You have to
12 have each one shown with proof beyond a reasonable doubt.

13 We'll talk about other things at the end of the
14 case, probably something about pecuniary value. That's
15 probably pretty obvious to all of us, but we will talk about
16 that at the time. I think everybody is probably not going to
17 have much dispute about what a cell phone is, an interstate
18 facility, and that sort of thing, but we'll talk about that a
19 little bit more.

20 Now, what about murder in Mississippi? Is murder
21 in Mississippi different from murder in Tennessee? I hope
22 not. I certainly hope it's the same, essentially.

23 Under the Mississippi law, murder is defined as
24 unlawfully and with deliberate design killing a human being.
25 Now, they're not saying somebody was killed here, but they're

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1 saying there was murder for hire. I'm trying to have
2 somebody killed.

3 Generally, in this instruction as to Mississippi
4 law, deliberate design means a person decides to unlawfully
5 kill another person, and there is no legal justification or
6 justifiable reason for doing so. Now, that last sounds like
7 a big hole, but it's really -- we'll have to talk about that
8 more at the end of the case. I mean, you don't get to kill
9 something because you don't like them. That's not a legal
10 justification. It has -- it would have to be usually
11 something akin to -- I'm not saying it would be -- something
12 like self-defense, and it wouldn't really fit here very well.
13 But it has to be some legally justifiable action.

14 So in this instruction in connection with
15 Mississippi law, deliberate design means a person decides to
16 unlawfully kill another person for no reason that's
17 defensible. The decision to kill a person can be formed very
18 quickly, and we need to understand that. It may occur only
19 moments before the actual act of killing. Now, again, that's
20 the idea what would constitute murder for hire. However,
21 deliberate design cannot be formed at the exact moment of the
22 actual killing. So it's already designed. It's a -- how do
23 you put it? It's like a plan. A deliberate decision to have
24 somebody killed, to kill someone.

25 At the end of the case, we'll give you more

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1 detailed instructions on these concepts. You'll have those
2 before you as you make your decision. You'll also have to
3 think, obviously, about what's the mental state of the person
4 who is making these decisions, right? because if you're
5 intentionally doing something, it's a mental issue for the
6 jury to decide.

7 Well, I want going to explain something. A
8 reminder to all of you of something you probably know
9 already. Ordinarily, there is no way that a defendant's
10 state of mind can be proved directly because, in fact, at
11 this point in time in our history, no one can read another
12 person's mind and tell what that person is thinking. Now, I
13 know someone might challenge me on that, but the fact is
14 we're not quite there yet.

15 So we start there. We're not mind readers. So
16 how is this going to be proven? How would the Government
17 have to prove this? Well, I suppose if they could have a
18 recording that says, I'm going to kill somebody, that might
19 be important.

20 But a defendant's state of mind can be proved
21 indirectly from the surrounding circumstances. This includes
22 something like what the person said, what the person did, how
23 the person acted, and any other facts or circumstances in
24 evidence that show what was in the defendant's mind.

25 Of course, you may consider the natural and

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1 probable results of any acts of the defendant you're
2 considering knowingly did or did not do and whether it is
3 reasonable to conclude that the defendant intended those
4 results. And this, of course, is all for you to decide. So
5 there are ways to prove this. And you still have to ask
6 yourself at the end: Has the Government met that burden with
7 proof beyond a reasonable doubt?

8 There is no requirement that the entire
9 conspiracy take place here in West Tennessee. But for you to
10 return a verdict on the conspiracy charge, the way it's
11 charged here at this point in time, the Government must
12 convince you that either the agreement or one of the acts in
13 furtherance of the conspiracy took place in West Tennessee,
14 there has to be a connection to the Western District of
15 Tennessee.

16 We've gone over a number of things already, and
17 I'm going to recheck. But I want to remind you again that
18 these are very preliminary instructions. They are designed
19 to help you listen to the case. There will be a clear set of
20 instructions at the end after we've conferred with counsel
21 and those instructions are the ones that you should follow in
22 determining your verdict in this case.

23 Now, there's seven things that I have to tell you
24 about, and you know them already.

25 The first thing is you cannot discuss the case

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1 among yourselves. And that makes sense. There's no
2 preliminary deliberation. You're not allowed. Well, that's
3 a good thing because that means that you have to listen to
4 everything and have final arguments and final instruction
5 where you can talk among yourselves about the case.
6 Absolutely no discussions among yourselves.

7 Second thing, there's absolutely no discussion
8 with family and friends and somebody you see at home or
9 somebody you usually call when you get home. Or, you know, a
10 relative that you see regularly. Even your spouse, you
11 cannot talk with them about the case. That's a prohibition.
12 It's really important. So after you hear the first witness
13 today, you may be tempted to go talk about the case. And the
14 answer is absolutely do not do it. Absolutely do not do it.

15 What do you do if somehow you give into that
16 temptation, what do you do? You come tell me about it. I am
17 not going to get mad at you. Of course, you might not be on
18 the jury any longer. I've got to think about that. That
19 will be a different thing. But we understand people are
20 people, so what we want you to do is to be transparent, to
21 tell me. And I'll be okay. And you'll be okay. But the
22 critical thing is that the process will be honored.

23 So when you go home and your significant other
24 says, tell me about the case, and you say, I can't tell you,
25 and they say, you must not love me anymore, then just tell

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1 them, I can't, I can't do it.

2 The third thing is that you cannot speak to the
3 witnesses, lawyers, or parties at all. Now, I'm going to
4 tell you a little nuance there. Obviously, you can't have
5 direct contact at all. There's no speaking to them, there's
6 no contact with them, anything like that. That also includes
7 that in the courtroom, the only way we receive testimony from
8 anybody is from the witness stand.

9 I am often reminded of a case long ago now, which
10 these prosecutors are too young to remember, in which they
11 brought in a codefendant who was a very large guy. And the
12 opposite counsel said, Judge, we'd like to mark Mr. Wilson as
13 an exhibit in the case. We can't do that. But that's an
14 illustration that even what you see in the courtroom from
15 prosecution table and defense table is not evidence. And I
16 have to tell you that because that's not fair to anybody to
17 make it that way. So that's just not evidence. The evidence
18 comes in from the witness stand. So if somebody tries to
19 say, well, I was looking out in the courtroom, and I saw such
20 and such, if it's something that you can consider, counsel
21 will approach me, and they will say, Judge, this occurred,
22 the jury saw it, you need to instruct them that they can't
23 actually consider that. But, otherwise, you can't consider
24 it. You can't consider it.

25 Well, the next thing is that you can't -- there

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1 should be -- is there still that placard in the back that
2 tells you what you can't do. It supposed to be green. It
3 used to be green. Still there? Good. It needs to be
4 bigger, but I agree.

5 You cannot do any research or make any inquiry at
6 all. I'm going over this kind of carefully. This will be
7 the last time to do that. You cannot do that at all. So no
8 research or inquiry. You now know enough to be curious
9 enough to be, if you're like me -- I'm not tempted to because
10 I don't need to, but it used to be everybody just go to
11 Google and look it up, right? And you cannot do that, so
12 here's not inquiry at all.

13 There's a famous case in Virginia in which the
14 jury decided that they didn't understand one of the terms
15 that had been used in court. And so they got a Webster's
16 dictionary, and they looked up the term in Webster's
17 dictionary. The problem was, one, you're not allowed to do
18 it.

19 The second problem was that the definition in
20 Webster's dictionary was not the legal definition. It was
21 wrong. And so you look at a wrong definition, you're
22 applying the wrong definition, and you can't do that. So
23 that's an emphasis, a way to think about it. Can't do it at
24 all. It's a relief to you, can't do it.

25 The sixth thing is avoid things from the media

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1 about this case or cases like it. I'm not telling you there
2 will be something. I don't now. There could be, though. It
3 wouldn't be unusual. But if you see something about this
4 case, you absolutely need to tell me, right? And you're just
5 going to tell Mr. Sample or the court security officer, and
6 they're going to come say, our juror in Seat Number 8 needs
7 to come see, you, and he's going to tell you about it. And
8 that's okay. That's fine.

9 If you do see something, though, you must tell me
10 about it, but I'm going to suggest that you avoid things like
11 that. And if there's a special *Law and Order* episode that
12 emphasizes -- none of you watch *Law or Order*, right? But any
13 that emphasizes murder for hire, the answer is, please don't
14 watch it right now because it can affect your ability to be
15 fair and impartial.

16 Okay. The last thing is I need you to keep an
17 open mind. I need you to keep an open mind throughout these
18 proceedings until you've heard the final arguments of
19 counsel, the final instructions of the law, which are going
20 to vary a little bit from what you've heard because I'm going
21 to add some details, take out a few things here and there.
22 Those will control your deliberations. And then you'll go to
23 the jury room, and the first thing you'll do is not vote.
24 That would be terrible, right? Completely avoids the whole
25 process because you have to deliberate.

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1 How many watched *12 Angry Men*? Oh, that's too
2 old for you guys. Maybe not. Okay. Well, the point is that
3 there has to be a discussion. And you all have to discuss it
4 together. You have to listen to each other, and you learn
5 from each other's observations and then -- and I'm talking
6 only about the evidence and the law. We're not talking about
7 something that happened to you personally. And then and only
8 then do you attempt to reach your own mind as to what the
9 verdict should be as to each individual defendant. And then
10 what the jury verdict should be.

11 Well, we've taken some time on this because this
12 is my last opportunity to tell you really much of anything in
13 this regard until we get to the final instructions. We're
14 going to speak briefly to counsel at side-bar and see if they
15 want me to add something, and then we're going to take about
16 a 20-minute break, and there will be some things that have to
17 happen during that period of time. And then we'll proceed
18 with opening statements. So let me see counsel briefly at
19 side-bar.

20 (At side-bar on the record.)

21 THE COURT: I wish I could make those really
22 short and I'll just give them a pill and move on, but I
23 can't.

24 Okay. Mr. Ballin, what do we need to add?

25 MR. BALLIN: Things that I do and say in court

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1 are to properly represent my client, so what I'm about to say
2 is toward that goal.

3 THE COURT: Okay. Sure.

4 MR. BALLIN: If I can voice an objection on
5 behalf of Defendant Ashley Grayson to the Court's
6 preliminary, instruction, specifically, when you talked about
7 the state of mind of the defendant, that we don't have
8 science to mind read.

9 THE COURT: No, we don't.

10 MR. BALLIN: That's not the problematic part of
11 it, but it's the preliminary part that we say is
12 objectionable and that I do object to.

13 You followed that up with an example of how to
14 prove a defendant's state of mind.

15 THE COURT: Potential evidence.

16 MR. BALLIN: The example you gave was a recorded
17 statement. In this particular case, because of the pretrial
18 issues that we had, it's known to all, respectfully, the
19 Court included, that there was going to be a video played.
20 It's our position that Your Honor giving the example of how
21 to prove the state of mind of the defendant is an improper
22 comment on the evidence.

23 THE COURT: Okay.

24 MR. BALLIN: And I would respectfully ask that
25 this Court declare a mistrial.

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1 THE COURT: I can tell them to disregard it too.
2 I can do that.

3 MR. BALLIN: It's already out, Your Honor.

4 THE COURT: Well, believe me, if I tell them to
5 disregard it, I'm confident they will.

6 MR. SCHOLL: I join in that objection, Your
7 Honor.

8 THE COURT: Okay. Comment?

9 MR. OLDHAM: No, Your Honor.

10 THE COURT: Okay. What do we need to do?

11 MR. OLDHAM: Your Honor, I believe that a
12 curative instruction from the Court addressing -- or a
13 curative pretrial instruction from the Court addressing
14 Mr. Ballin's concern could alleviate the concern of speaking
15 of the Court, that's a generic example and has no bearing on
16 this case.

17 Maybe give another example that doesn't then
18 bring in any of the facts in this case. But I think this
19 early on and with this process and the jury knowing that
20 you're telling them something this early on, I think that
21 could be curative.

22 THE COURT: Okay. And what do you want me to
23 say? I'm pretty good at getting that part right if you just
24 let me know.

25 MR. PHILLIPS: Your Honor, since we were already

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1 going to take a 20-minute recess, could we have just a few
2 moments to confer with our office and then we might have
3 potentially something additional, Your Honor?

4 THE COURT: I mean, there's going to be a big
5 issue about the tape, right?

6 MR. BALLIN: It is the biggest concern.

7 THE COURT: I wasn't trying to tell them what's
8 going to be proven. I'm trying to alert them so that they're
9 not surprised. It's one of those things -- so you want me to
10 tell them something more specific or less specific or just
11 not at all?

12 MR. BALLIN: It's our position the harm has been
13 done, Your Honor.

14 THE COURT: Well, let's talk about curing the
15 problem.

16 MR. BALLIN: I hear Your Honor's question about
17 how to cure the problem, and I appreciate the Court
18 considering curing the problem. Our main and primary
19 response is to grant the mistrial.

20 THE COURT: Okay.

21 MR. BALLIN: As to how the cure the problem, I
22 defer to the Court.

23 THE COURT: Do you want to say something?

24 MR. PALMER: I join everything that Mr. Ballin is
25 saying. I don't know with that comment, you can unring that

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1 bell, that any curative instruction would be --

2 THE COURT: Sometimes -- let me tell what you we
3 do. Sometimes because it's a preliminary instruction, we
4 don't say anything because we don't want to draw undue
5 attention to something. So that's a concern. You're always
6 thinking about that. Are you going to cause undue attention
7 to be drawn to it? I can say, "Look, disregard that. I
8 didn't need to say that. That was inappropriate. Just don't
9 think about it at all." I think I think they would do that.
10 I'm not worried about that. Jurors are pretty good at that.
11 But the main thing is it's a preliminary instruction. It's
12 not binding in any way on you. I could always do that.

13 MR. SCHOLL: I'm concerned that, respectfully,
14 Judge, that the problem is with this case, is that the --
15 really, I don't think anybody would disagree with me the
16 biggest piece of evidence in this case is that video. And
17 the biggest part of the defense is lack of intent. And now
18 the jury has been given information that they can infer
19 intent from a recording.

20 THE COURT: Okay.

21 MR. SCHOLL: So that would be the concern, at
22 least with regards to as I would voice it.

23 THE COURT: Okay. What do you think about that?
24 Anything else?

25 MR. BALLIN: I honor Mr. Phillips asking for a

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1 moment for them to confer and possibly for us to confer.

2 MR. OLDHAM: Would that be allowed, Your Honor,
3 that during this break you were going to take anyways for us
4 to be able to confer to see if there's any other remedy that
5 we can --

6 THE COURT: Well, preliminary instructions are
7 not for the purpose of instructing the jury. They're solely
8 for the purpose of giving the jury some guidance. And I
9 don't think it's inappropriate to alert the jury that they
10 may want to be sensitive about things that might come up, so
11 that's not the problem.

12 The problem is the suggestion that I'm saying
13 that would prove intent, which it would not. It's not
14 necessarily going to prove that at all. And I understand --
15 right? And I understand that. Unless you think it is going
16 to prove it, then I would be very interested in --

17 MR. PALMER: That's, I think, our concern.

18 THE COURT: You would agree that the jury could
19 reject that and decide there's no intent?

20 MR. BALLIN: That's our concern that Your Honor
21 has given an example of how to prove the defendant's intent.

22 THE COURT: Well, I understand what you're
23 saying. Okay. I understand that. And the question is then:
24 What do you do -- one, again, it's preliminary, how do you
25 best address that? Of course, it is correct that you could

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1 prove it through use of a recording, right? I mean, that
2 would be wrong not to say --

3 MR. BALLIN: It would be Your Honor commenting on
4 the evidence.

5 THE COURT: No, no, no, I'm not saying that. I'm
6 mean, I'm just saying a matter of fact and law, that would be
7 a way to do it. I'm not saying I'm going to use it. I'm
8 just asking. I think there is a way you can do it.

9 I know he needs to turn that tie around. We've
10 been watching the whole time.

11 So let's just figure out what we need to say.

12 MR. OLDHAM: Your Honor, I think since you've
13 used that as an example, maybe you could give a couple of
14 other examples. I just think it important they hear some
15 other examples this could be proved. This isn't the only
16 way.

17 THE COURT: What other example do you want to
18 suggest?

19 MR. PHILLIPS: I think that's the 20-minute
20 recess.

21 MR. PALMER: We've discussed at length between
22 counsel that without the video, this case would most likely
23 not be prosecuted.

24 MR. OLDHAM: That's the whole crime, Your Honor.
25 We would argue that there's some other things, but the

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1 evidence upon which we are relying the most is that one video
2 that's split into two segments.

3 THE COURT: What I've always understood is that
4 you were going to attack the veracity of that video, and you
5 were going to have an expert who is going to testify about
6 that.

7 MR. PALMER: Sure.

8 THE COURT: And, therefore, that's not a
9 concluded item.

10 MR. LEVINE: That's not really accurate, Your
11 Honor. Respectfully, that's a very small part of our
12 defense. The larger part, the greater weight of our defense
13 is going to her lack of intent.

14 THE COURT: Sure.

15 MR. SCHOLL: And the problem is I don't think --

16 THE COURT: I mean, I'm not disagreeing with you.
17 I think that's more my perspective, which it's just a piece.
18 It's not a conclusion.

19 MR. SCHOLL: I think that the thing that gets
20 attacked on the video is whether it's been spliced or
21 partially missing some of it. The part that you actually see
22 on the video, I don't think that's being to be any argument
23 that it's been edited at least that part. The video is not
24 of my client, but I don't think there's going to be -- there
25 will be an argument from us that this was ever edited as far

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1 as what was being said on the video. Now, maybe that is a
2 portion of what the whole conversation was, but what is being
3 said on the video, I don't believe is -- my understanding is
4 there's not going to be any dispute that it's going to be --

5 THE COURT: Problematic.

6 MR. SCHOOL: -- what she said.

7 THE COURT: I understand what you're saying. Let
8 me see if we can handle it this way.

9 (End of discussion at side-bar.)

10 THE COURT: I need to clarify something that we
11 went over earlier, and that is we were talking about intent.
12 I probably gave an example that's not really appropriate to
13 have given in this case, so I want you to rethink that.

14 I'm going to tell you about some uses of video in
15 previous cases, not in this case. Not in this case at all.
16 We just tried a case not long ago in which there were
17 multiple both video recordings and silent recordings. Some
18 didn't have audio. Some did. It was a multiple -- it had
19 multiple charges in the case, a lot of things going on. And
20 sometimes you couldn't tell exactly what was going on.

21 But in that case, there was one little piece of
22 evidence that showed up in several videos, and that was a
23 particular black Impala. And part of the thing was where was
24 the defendant? Was the defendant there or not there? Well,
25 I'm not sure. I don't know. But part of the circumstantial

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1 evidence was that a black Impala owned or having -- the
2 defendant having access to because it's actually owned by
3 someone else but having access to was in these locations,
4 actually, in the locations on some occasions in front of the
5 facility or store that was robbed.

6 Well, did that say that the defendant was there?
7 No. That was -- not really. We didn't see the defendant.
8 We saw a black Impala that he had access to and that he could
9 drive. Well, that was a piece of the case. The question was
10 did he -- was he there and did he have the intent to commit
11 these particular offenses, but it was mainly was he present?

12 So circumstantial evidence does not necessarily
13 tell you what actually happens, right? But it tells you that
14 it is a fact from which you may draw another conclusion. You
15 may draw the conclusion that this was a totally different
16 person totally unrelated to this case, that he was there.
17 You may draw the conclusion that there are lots of black
18 Impalas in Memphis, Tennessee that look like this car.
19 There's just not enough proof to show that he was there.
20 It's far from conclusive on that question. So that can be
21 circumstantial evidence that suggests that you might draw
22 that inference, but you sure want to look at lot of other
23 material.

24 Now, any reference that I made earlier to any
25 video or tape or recording, I'm going to ask you to disregard

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1 that. Just don't think about it. That is not before you at
2 this time, and we're going to wait and see and I don't know
3 what will happen in this case. And I'm not even saying that
4 is a basis or sufficient basis to draw any conclusion about
5 anything. I just don't know. I just don't know. And thank
6 goodness, I don't have to make those decisions.

7 So if somebody says, well, the judge said
8 something about in the preliminary instructions, you say,
9 wait a minute, wait a minute, those were preliminary. They
10 were just talking points. They weren't things that are going
11 to relate to this case. It's just a very matter -- and I'm
12 not -- we're disregarding that altogether. I'm going back to
13 the black Impala. We're just going back to the idea that
14 there can be things that suggest that an inference can
15 withdrawn. But I don't know, and you don't know.

16 What we do know is, what? That you're going to
17 get to see the evidence that's properly admissible in the
18 case, and you can draw those inferences, and that's an
19 important point, that are logical and appropriate in the case
20 because we understand that a jury can draw inferences, but
21 you're not required to. So we're going to wait and see on
22 that. So I'm going to ask you, erase mode. We're going to
23 be back to that one. We're going to take that one out
24 because that's not something we're going to talk about here.
25 And if somebody brings it up and says I said, you're not

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1 going to hear me saying that in the final instructions. I'll
2 tell you that right now. It's not going to be there. It's
3 not going to be there because we're leaving every issue,
4 every issue regarding the facts in the case entirely up to
5 you. I never want to suggest anything about those things.
6 That's just not my business. That's not my job, and I should
7 not do that.

8 Now, we said that we would take about a 20-minute
9 break, and we will check with counsel. At least 20 minutes.
10 I need to make sure that everything is arranged that we need
11 to have arranged earlier. It is. Good. Absolutely.

12 So we're going to let you be excused to the jury
13 room, and this is a 20-minute break, but you may also need to
14 visit with someone who needs to go over some information with
15 you there, and please give that person your undivided
16 attention. Thank you all very much.

17 (Jury out at 2:22 p.m.)

18 THE COURT: Let me see counsel briefly at
19 side-bar and then we can have a break and come back for
20 opening statements.

21 (At side-bar on the record.)

22 THE COURT: All I can do is hit the erase button,
23 and I know you don't agree. Now I've got poor Mr. Moore in
24 this other case. They did have a black Impala. I promise.
25 They didn't show Mr. Moore. They just showed that black

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1 Impala.

2 MR. BALLIN: All right. So a couple of weeks
3 ago.

4 THE COURT: You know about Mr. Moore's case. No,
5 you don't.

6 MR. BALLIN: A couple of weeks ago, a landscape
7 company that does my yard put these fancy plants in my yard,
8 and I'm thinking I wonder how much this is going to cost me.
9 And the reason I'm asking is they look like the way they
10 are -- they're long and skinny, and I'm thinking the first
11 breeze that comes along, it's going to break, and it can't be
12 fixed. So lo and behold, what my fear was, the wind came and
13 this plant that cost me God knows how much money can't be
14 fixed even though --

15 THE COURT: It's got a guarantee. They'll come
16 replant it.

17 MR. BALLIN: Even though I tried to upright it
18 and put it together, it just -- they took it out. Hadn't
19 replaced it. So I say that, and certainly I heard Your Honor
20 tell them, in your words, hit the erase button. I must renew
21 my motion for a mistrial.

22 THE COURT: That's fine.

23 MR. SCHOLL: I join in on behalf of Mr. Grayson
24 also.

25 THE COURT: Absolutely. You're going to feel

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1 really funny when you get a not guilty in this case, but I'm
2 okay with that. I'm sort of kidding. I'm just saying, but
3 then the Government is going to say, oh, we should have
4 granted that motion. No, I understand what you're saying.
5 It's all I can do under the circumstances. I wasn't
6 intending -- you know, we have lots of illustrations and lots
7 of things that happen here but that was a little too close so
8 we need to get away from it and give them some other thing
9 that lets them understand that something might be
10 circumstantial, but it's not conclusive. It doesn't tell us.
11 Now, I know I think that you've been telling me, and I don't
12 disagree the tape may not be great evidence.

13 MR. PALMER: No, that's why we spent so much time
14 on the motion to exclude.

15 THE COURT: I know, and I understand that.

16 MR. PALMER: If you want to revisit that.

17 THE COURT: No, no. That's been well done.
18 Everybody did a good job on that.

19 MR. SCHOLL: The concern is although it was a
20 good circumstantial example, this --

21 THE COURT: I could have done the rain thing. I
22 thought about doing that one, the umbrella thing. Talking
23 about the raincoat. I could have done that.

24 MR. SCHOLL: The video is sort of direct evidence
25 of intent. It could be in this situation.

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1 THE COURT: Well, I hear what you're saying. It
2 could be.

3 MR. PALMER: That's what they're banking on.

4 MR. OLDHAM: Your Honor, frankly, just come on
5 say it, I think their defense is going to be even if it
6 sounds like that's what she's saying, that's not really what
7 she's saying.

8 MR. PALMER: Exactly.

9 THE COURT: That's what I've understood what they
10 were going to say all along. Am I wrong about that?

11 MR. BALLIN: No, sir.

12 MR. SCHOLL: My guy didn't know anything about
13 it. I'm still back here. But I'm still in the middle of
14 trial too. I'm in both places, Judge.

15 THE COURT: No, I understand. Sometimes you just
16 have a lot of things that happen. There's circumstantial
17 evidence in our cases, and sometimes we have to play the
18 cards we've got, and I think the jury understands they're
19 preliminary. They understand they're going to make all the
20 fact determinations, and I'm not suggesting any fact that
21 should be concluded, and that's all I can do. That's the
22 truth. You know how much I don't care in that -- I don't
23 mean this in a bad way. I care about the case, but I
24 truly -- I leave it up to the jury. I'm happy to do that in
25 every case, and I know that experienced Texas counsel, a lot

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1 of times you're just really glad that's a jury.

2 MR. BALLIN: And I'm thinking about the
3 potential -- and on the tree thing --

4 THE COURT: I've got a good nursery.

5 MR. BALLIN: I'm just thinking about the
6 potential sentence upon a conviction. It's a pretty stiff
7 guideline-wise. It's a ten-year statutory maximum and I
8 think the -- it just --

9 THE COURT: This is a tough case.

10 MR. BALLIN: It's a tough case, and we all make
11 mistakes. I make mistakes every day.

12 THE COURT: I think I told them I did. That's
13 all I can do.

14 MR. BALLIN: But because of the potential
15 ramifications to our client, isn't the best, wisest thing to
16 do is to grant a mistrial so we don't have this --

17 THE COURT: It's an interesting question, and we
18 always think about that. I don't disagree that I've -- you
19 know, anything you indicate I'm going to give very serious
20 thought to. I think the answer is kind of what I've said a
21 little bit already.

22 First of all, it's a preliminary instruction.
23 You tell them that's not going to govern what they do.
24 Absolutely. Then you come back and tell them, don't think
25 about that, and they know they weren't supposed to and let's

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1 just talk about what would constitute evidence that would
2 be -- what happens in other cases. It's not direct evidence.
3 This does sound like more direct evidence in the case, but I
4 can't -- I just -- you know, I worry about always -- I worry
5 about always expecting a level of perfection that I'm
6 probably incapable of achieving, and I understand that. So I
7 always look to you guys to help us get to the best place.

8 I don't think a mistrial is the best thing in
9 this case. I think that we have done what we needed to do,
10 and we're at a stage where we've done all we can do. And
11 also I look out there and I think, you know something,
12 there's a lot that's been invested by all the parties in this
13 case to get to this point, including your clients. And I
14 worry about things like they've got a good jury. They've got
15 a very thoughtful jury. This jury is going to listen very
16 carefully to everything that you say. I'm not sure who is
17 going to be saying it.

18 And I'm very comforted by that fact. And I know
19 that at the end of the case, we will give the instructions
20 that they will follow. So I think we can -- if you will help
21 us, and I really invite you to do this, to make sure that in
22 the final instructions if there's anything else that we need
23 to say, I'll say it, I'll get it said. I think that for
24 example as to Mr. Grayson, it would be really terrible to not
25 let him go ahead and get this over with.

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1 MR. SCHOLL: Mr. Grayson, he doesn't know a lot
2 about the law or anything else, but he was paying attention
3 to Your Honor's instructions, and that sort of peaked up at
4 the same time Mr. Ballin peaked up and he grabbed my jacket.
5 And then after Your Honor finished going, he goes, man, I
6 don't want this jury. They just heard that that video was
7 going to be her intent to do this. And then when I went
8 back, he goes, Mike, I don't want this jury, they can't
9 unhear what was just heard. That was his response to me.

10 Just putting that on the record because it became
11 an immediate concern for him, and he's not a lawyer. He
12 doesn't really even know anything about the instructions.
13 And so -- in fact, he lost his place when we were doing jury
14 voir dire. But it came up that much for him enough to grab
15 me and him make the independent comments to me about that.

16 THE COURT: Sure, sure. And that's why we say
17 what we've said, and I think that that's all we can do at
18 this time. And if we get it wrong, we're very thankful we've
19 got a Sixth Circuit Court of Appeals. I'm not going to be
20 offended. The idea, though, is we're all working hard to get
21 a fair result in the case that's not influenced by anything
22 inappropriately. And we're going to work hard on that, so
23 just continue to give it some thought, and we'll get it
24 worked out.

25 MR. LEVINE: May I add one thing?

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1 THE COURT: Sure. And we're getting a little --
2 I'm getting beaten up by four lawyers instead of two.

3 MR. LEVINE: I know. Yes, Your Honor. You then
4 told them that you're not sure that there's going to be a
5 video in this case when the Court knows there's a video in
6 this case.

7 THE COURT: Well, it hasn't been admitted yet.
8 It hasn't been received. And I can't say things like it's
9 going to come in because I can't say that.

10 MR. LEVINE: I understand, Your Honor, but you
11 also said you don't know and you mentioned video again, so
12 now when they hear it, it's going to be there is a video.

13 MR. PALMER: Are you going to play it in your
14 opening?

15 MR. OLDHAM: No.

16 THE COURT: He's not. Okay. I always tell
17 everybody I can't do anything about the good facts or the bad
18 facts in anybody's case. I don't have anything to do with
19 that. That's up to the lawyers to deal with. My job is to
20 make sure the jury makes the decision based solely on the
21 evidence and the law. And if I make a mistake, we will tell
22 the jury that we need to not consider that and I have been
23 confident for a long time and still confident that the jury
24 will take my instruction. Juries are good at that. They
25 know they can't do it. And we have to have faith in the

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1 system. I think it will work just fine.

2 But we need to let everybody get a little bit of
3 a break. I know you've got to get ready for -- Government
4 has got to be ready. We have how many minutes before we
5 start back up, eight?

6 CASE MANAGER: Seven now.

7 MR. BALLIN: Can we have ten? We're going to
8 take eight minutes.

9 (End of discussion at side-bar.)

10 (A recess was taken from 2:33 p.m. to 2:43 p.m.)
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C E R T I F I C A T E

I, TINA DuBOSE GIBSON, do hereby certify that the foregoing 48 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the preliminary instructions held on the 28th day of March, 2024, in the matter of:

UNITED STATES OF AMERICA

vs.

ASHLEY GRAYSON AND

JOSHUA GRAYSON

Dated this 28th day of March, 2024.

s/Tina DuBose Gibson

TINA DuBOSE GIBSON, RPR, RCR
Official Court Reporter
United States District Court
Western District of Tennessee